

**Board of Forestry and Fire Protection  
Title 14 of the California Code of Regulations**

[Notice published July 28, 2000]

**NOTICE OF PROPOSED RULEMAKING**

**Watershed Protection Extension, 2000**

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

**PROPOSED REGULATORY ACTION**

The Board proposes to amend the following existing sections of Title 14 of the California Code of Regulations (14 CCR):

§ 895.1	Definitions
§ 898(a)	Feasibility Alternatives
§ 898.2(i)	Special Conditions Requiring Disapproval of Plans
§§ 914.8 [934.8, 954.8](g)	Tractor Road Watercourse Crossing
§§ 916 [936, 956](e)	Intent of Watercourse and Lake Protection
§§ 916.2 [936.2, 956.2](d)	Protection of the beneficial Uses of Water and Riparian Functions
§§ 916.9 [936.9, 956.9](y)	Protection and Restoration in Watersheds with Threatened or Impaired Values
§§ 916.11 [936.11, 956.11](b)	Effectiveness and Implementation Monitoring
§§ 916.12 [936.12, 956.12](f)	Section 303(d) Listed Watersheds
§§ 923.3 [943.3, 963.3](h)	Watercourse Crossings
§§ 923.9 [943.9, 963.9](g)	Roads and Landings in Watersheds with Threatened or Impaired Values

**PUBLIC HEARING**

The Board will hold a public hearing starting at 1:30 p.m. on Tuesday, September 12, 2000. The hearing will be held in the Resources Auditorium, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part

of the public record. Such information shall be retained by the Board and shall be made available upon request.

## **WRITTEN COMMENT PERIOD**

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 p.m. on Monday, September 11, 2000. The Board will consider only written comments received at the Board office by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

### **All written comments shall be submitted to the following address:**

Board of Forestry and Fire Protection  
Attn: Dennis O. Hall  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

### **Written comments can also be hand delivered to the contact person listed in this notice at the following address:**

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

### **Comments may be faxed to the Board's office using the following number:**

(916) 653-0989

## **AUTHORITY AND REFERENCE**

Public Resources Code (PRC) § 4551 authorizes the Board to adopt such Rules and regulations as it determines are reasonably necessary to enable it to implement, interpret, or make specific sections 4513, 4514.3, 4551.5, 4551.7, 4552, 4553, 4562.5, 4562.7, 4562.9, 4582, and 4584 of the Public Resources Code.

## **INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW**

The Z'berg-Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) established the Legislature's concern throughout the State relating to the use, restoration, and protection of the forest resources. The Legislature further recognized that these forest resources provide watershed protection and fisheries

maintenance. The Legislature declared that it is the policy of the State to encourage responsible forest management that considers the public's need for watershed protection and fisheries (ref. PRC § 4512). Furthermore, the Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. This system is to assure the productivity of timberlands and the goal of maximum sustained production of high quality timber products. It is also intended to give consideration to values related to watershed, wildlife, and fisheries (ref. PRC § 4513). Public Resources Code § 4551 gives the Board the authority to adopt such rules and regulations which will enable it to carry out its responsibilities to protect fish and water resources, including but not limited to streams, lakes, and estuaries.

In 1996, the State Fish and Game Commission listed Coho salmon south of San Francisco Bay as threatened under the State Endangered Species Act (ESA). Then in 1997, the National Marine Fisheries Service (NMFS) listed Coho salmon as threatened throughout its range in California under the Federal ESA. Steelhead trout was listed by NMFS as a threatened species in the Northern California ESU on June 7, 2000.

Among many other sources of information considered by the Board in preparing the proposal for rule changes, a comprehensive review of the California Forest Practice Rules (FPRs), with regard to their adequacy for the protection of salmonid species, has been prepared for the Board (*Report of the Scientific Review Panel* [SRP report], 1999). Following an extensive review of the regulations, "The SRP concluded the FPRs, including their implementation (the 'THP process') do not ensure protection of anadromous salmonid populations" (*Report of the Scientific Review Panel*, 1999). Although this report was specific to the North Coast region, the Board believes that many of the recommendations made in the report could be effectively applied throughout the State to ensure the protection of the beneficial uses of water, including fisheries and other aquatic habitat.

The Board of Forestry and Fire Protection recognized the substantial concerns raised by other agencies additionally charged with the protection of the State's valuable watershed resources. The Board is also extremely aware of the need to protect listed species that may be impacted by practices that are regulated under the Board's purview, regardless of their location within the State. Furthermore, the Board recognized the potential for economic impacts to timberland owners and others that could be imposed from certain types of restrictions or requirements. Considering these factors, the Board adopted changes to the Forest Practice Rules under a previous rulemaking package (*Protection for Threatened and Impaired Watersheds*, 2000).

It should be noted that pursuant to PRC §§ 4512, 4513, 4551, 4551.5, 4552, and 4553; the Board is moving forward with action to further analyze the effectiveness of the rules to protect listed species and the beneficial uses of water. In order to clarify the Board's intent to address the protection of listed aquatic species and watercourses listed as impaired (pursuant to section 303(d) of the Clean Water Act) on a watershed basis, the Board chose to establish a specific period of time that the rule changes adopted July 1, 2000, would be effective. By imposing a limit on the effective period of the rule

changes, the Board would be allowed to work with landowners, scientists and other parties during the balance of the current year to investigate whether an alternative regulatory approach could be developed. The Board is currently working to establish a group to research whether an alternative approach can be developed that would use enhanced scientific analysis and the principals of watershed analysis to determine, among other things, the potential cumulative environmental impacts of proposed timber harvesting operations and associated activities. The Board hopes that an accumulation of knowledge applicable to specific watersheds and basins will be brought together by the various agencies and the public. This knowledge could then be used to tailor site-specific forest practices to avoid any significant environmental impacts from individual timber harvesting plans, or cumulative impacts from various activities in a watershed that could combine with the effects of timber harvesting. However, the Board recognizes that this alternative approach will not be fully implemented prior to December 31, 2000. Therefore, the Board chose to extend the effective period of those changes adopted by the Board that became effective July 1, 2000. This rulemaking action proposes to extend the effective date of the changes to December 31, 2001. This will provide the Board adequate time to evaluate and implement alternatives to those rules that became effective July 1, 2000.

#### **14 CCR § 895.1**

#### **Definitions**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (1). The Board proposes to extend the effective period of the changes to December 31, 2001.

#### **14 CCR § 898(a)**

#### **Feasibility Alternatives**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (a). The Board proposes to extend the effective period of the changes to December 31, 2001.

#### **14 CCR § 898.2(i)**

#### **Special Conditions Requiring Disapproval of Plans**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes

to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (i). The Board proposes to extend the effective period of the changes to December 31, 2001.

**14 CCR §§ 914.8 [934.8, 954.8](g)**

**Tractor Road Watercourse Crossing**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (g). The Board proposes to extend the effective period of the changes to December 31, 2001.

**14 CCR §§ 916 [936, 956](e)**

**Intent of Watercourse and Lake Protection**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (e). The Board proposes to extend the effective period of the changes to December 31, 2001.

**14 CCR §§ 916.2 [936.2, 956.2](d)**

**Protection of the Beneficial Uses of Water and Riparian Functions**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (d). The Board proposes to extend the effective period of the changes to December 31, 2001.

**14 CCR §§ 916.9 [936.9, 956.9](y)**

**Protection and Restoration in Watersheds with Threatened or Impaired Values**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (y). The Board proposes to extend the effective period of the changes to December 31, 2001.

**14 CCR §§ 916.11 [936.11, 956.11](b)**

**Effectiveness and Implementation  
Monitoring**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (b). The Board proposes to extend the effective period of the changes to December 31, 2001.

**14 CCR §§ 916.12 [936.12, 956.12](f)**

**Section 303(d) Listed Watersheds**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (f). The Board proposes to extend the effective period of the changes to December 31, 2001.

**14 CCR §§ 923.3 [943.3, 963.3](h)**

**Watercourse Crossings**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (h). The Board proposes to extend the effective period of the changes to December 31, 2001.

**14 CCR §§ 923.9 [943.9, 963.9](g)**

**Roads and Landings in Watersheds with  
Threatened or Impaired Values**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (g). The Board proposes to extend the effective period of the changes to December 31, 2001.

## DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: The rule proposal will affect businesses and small business related to the timber industry by extending the effective period of rule changes that increase the cost for timber harvesting. These extra costs are associated with planning, operations, and monitoring, and may include but are not limited to: additional planning, construction and maintenance costs for roads and watercourse crossings, additional cost of professional consultations, and costs associated with a reduction in long term sustained yield (LTSY). There may also be additional cost associated with additional inspections.

Although the Board staff has identified the potential for increased costs associated with the previous changes to the Rules, which would be extended under this rule proposal, the Board staff also identified the potential for increased benefits to other sectors of business in the State. Some of the benefits derived from the change in the Rules could be contributed to both market and non-market values related to increases in anadromous fish populations, reduction in the costs of flood control, and the ability of land managers to continue to harvest timber without the restrictions that could result from a determination of "take" by the National Marine Fisheries Service. Benefits will also be derived from potentially enhanced beneficial uses of water for drinking and other recreational uses besides those related to sport fishing.

The Board staff does not anticipate that the increased costs will result in a significant adverse economic impact on business, nor has it determined that it will affect the ability of California businesses to compete with businesses in other states.

(Note: cost and benefit estimates for the individual Rules, which will be effectively extended for a period of one (1) year, are presented in the *Initial Statement of Reasons*.)

- Potential cost impact on private persons or directly affected businesses: As indicated above, the rule proposal will affect businesses, and large and small landowners with an interest in the timber products industry by extending the effective date of rule changes that increase the cost for timber harvesting. These extra costs are associated with planning, operations, and monitoring, and may include but are not limited to: additional planning, construction and maintenance costs for roads and watercourse crossings, additional cost of professional consultations, and costs associated with a reduction in long term sustained yield (LTSY).

The Board staff anticipates that offsetting benefits will be derived from increases in recreation and commercial fishing, as well as reductions in the costs of flood control in some areas.

(Note: cost and benefit estimates for the individual Rules are similar to those referenced above and are presented in the *Initial Statement of Reasons*.)

- Significant effect on housing costs: None are known.
- Adoption of these regulations may create or eliminate jobs within California. It is estimated that the reduction in long-term sustained yield resulting from the reduction in timber available for harvest could result in the loss of some 4,800 jobs over the long term. However, the increase in fish populations and enhanced recreational values that could result from the increased protection measures over the long term could result in the creation of jobs in the fishing industry and related industries over the long-term, offsetting the loss of jobs in other sectors of the economy. It should be noted that the changes proposed under this rulemaking action would only allow the rules to be effective for a period of one (1) year. Therefore, it is unlikely that the effects estimated to occur over the long-term would be realized.
- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.
- The proposed Rules do not conflict with, or duplicate Federal regulations.

## **BUSINESS REPORTING REQUIREMENT**

The regulation does not require a report, which shall apply to businesses.

## **PLAIN ENGLISH DETERMINATION AND OVERVIEW**

### *Small Business Determination*

The Board has determined that the proposed regulations affect small businesses.



### Plain English Policy Overview

Within the last few years, the Coho salmon have been listed throughout their range as a threatened species. The steelhead trout has also been listed as a threatened species in Northern California. In addition, several watersheds within the State have been listed as being limited in regard to water quality. Many of the factors that led to the listing of these species, and the watersheds can be affected by timber harvesting operations.

The Z'berg-Nejedly Forest Practice Act of 1973 established the legislature's intent to consider the public's need for long-term watershed protection, fisheries and wildlife. It directed the State Board of Forestry and Fire Protection to adopt Rules to control unreasonable effects on the beneficial uses of the State's waters. In March and April of 2000, the Board adopted changes to the Forest Practice Rules under a previous rulemaking package (*Protection for Threatened and Impaired Watersheds, 2000*).

The Board is taking steps to further evaluate the effect of the rules with regard to protecting certain listed fish species and water quality. In adopting the rules in July of 2000, the Board chose to establish a specific period of time that the rule changes would be effective. The Board is currently working to establish a group to research whether an alternative can be developed that would use a watershed analysis approach to determine, among other things, the potential impacts of proposed timber harvesting operations. However, the Board recognizes that this alternative approach will not be fully implemented prior to December 31, 2000. Therefore, the Board chose to extend the effective period of those changes adopted by the Board that became effective July 1, 2000. This rulemaking action proposes to extend the effective date of the changes to December 31, 2001. This will provide the Board adequate time to evaluate and implement alternatives to those rules that became effective July 1, 2000.

### Availability of the Text in Plain English

According to Government Code section 11346.2, (a)(1) an agency that adopts a regulation that affects small businesses must draft the regulation in plain English as defined in 11342(e). The Board has attempted to draft the regulations in plain English whenever possible, and non-familiar language is defined within the regulations. However, the Board has determined that it is not feasible to fully draft the regulations in plain English due to the technical nature of the regulations. Therefore, a non-controlling plain English summary is available from the agency contact person named in the notice.

To facilitate review, and provide for meaningful public participation in the rulemaking process, the *Informative Digest/Plain English Overview* for this notice and any future notices pertaining to the rule section changes referenced in this notice shall constitute the non-controlling plain English summary of the regulation.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(12), the Board must determine that no alternative it considers would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Board has determined that the proposed regulations may impact businesses. However, the Board has not identified any equally effective alternatives that would lessen any adverse impact on businesses at this time. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing, or during the written comment period. Submissions may include the following considerations: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses, (ii) Consolidation or simplification of compliance and reporting requirements for businesses, (iii) The use of performance standards rather than prescriptive standards, or (iv) Exemption or partial exemption from regulatory requirements for businesses.

## CONTACT PERSON

Questions about the proposed action, or requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, and modified text of the regulations; may be directed to:

Board of Forestry and Fire Protection  
Attn: Dennis O. Hall  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9418 or,  
(916) 653-8007  
Fax: (916) 653-0989

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

A copy of the express terms of the proposed regulation is also available on the Board of Forestry and Fire Protection web page:

**[http://www.fire.ca.gov/bof/board/board\\_proposed\\_rule\\_packages.html](http://www.fire.ca.gov/bof/board/board_proposed_rule_packages.html)**.

In order to clearly indicate those sections proposed for change in this 45-Day Notice, the text is presented in the following format:

- The specific rule language proposed to be amended under this rulemaking action is shown double-spaced. This text is not shown in **BOLD** text format.
- Single-spacing represents the full rule text as it has been previously adopted by the Board. This is for reference and readability only. In addition, the previously adopted rule changes that are effected by this rulemaking action are shown in **BOLD** text format. **TEXT PRESENTED IN THIS FORMAT IS NOT PROPOSED TO BE CHANGED UNDER THIS RULEMAKING ACTION.**
- All other text is existing rule language.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. As of this date, this notice is published in the *Notice Register*.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

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Dennis O. Hall  
Regulations Coordinator  
Board of Forestry and Fire Protection

doh: 07/04/2000  
File: 45 Day Notice